

DOCKET NO: NHHCV195003875S

SUPERIOR COURT

SMITH BY HER MOTHER NICHELLE  
HOBBY, NYRIEL Et AlHOUSING SESSION  
AT NEW HAVEN

V.

CITY OF NEW HAVEN Et Al

8/6/2019

ORDER

## ORDER REGARDING:

07/16/2019 130.00 MOTION TO DISMISS PB 10-30

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

The defendants' motion to dismiss is respectfully denied.

The defendants have moved to dismiss this action for lack of personal jurisdiction because the writ, summons and complaint failed to identify a return date. In fact, the writ, summons and complaint did not contain a return date. However, appearances by multiple attorneys have been timely filed for each defendant. The defendants initially removed this matter to federal court, but that court remanded this matter to this court. Further, the defendants have fully participated in this litigation, including in the federal removal and the conduct of a temporary injunction hearing. The court has issued a temporary injunction which remains in place. After all of the foregoing had taken place, and almost two months after the service and filing of the complaint, the defendants filed a motion to dismiss on July 16, 2019. The plaintiffs have opposed the motion. The court denies the motion for the following reasons:

1. The defendants waived their right to contest personal jurisdiction by their active participation in this litigation including removing it to federal court, having it remanded, and litigating the temporary injunction hearing to a conclusion and issuance of an injunction. In this regard, the defendants have intentionally and purposefully invoked jurisdiction over themselves by the foregoing substantive participation in this litigation. No generic disclaimer asserted by the defendants can undo this waiver. If the court were to allow the defendants to challenge personal jurisdiction at this point, it would be allowing the defendants to actively engage in litigation and then try to withdraw when they receive a result that they do not like. Unlike subject matter jurisdiction, personal jurisdiction can be consented to by conduct and any challenge thereto can be waived. In this regard, the court finds that the defendants have consented to jurisdiction by their conduct in participating in this litigation and have waived their ability to contest personal jurisdiction by their conduct and their untimely raising of the issue.

2. In the alternative, defects in the writ, summons and complaint are curable as provided for in Connecticut General Statute 52-72. In this regard, the court finds that the parties had proper and timely notice of the pendency of this action and that none of the parties' rights have been prejudiced or affected by the lack of a return date. This matter was initiated with an order by the court to show cause which set the initial hearing date. The defendants were properly served the verified complaint and the order to show cause by a state marshal. The defendants each timely appeared through counsel and vigorously participated in the litigation. No rights of any party have been prejudiced or affected by the lack of a return date. Further, at this point a return date would serve no purpose since all parties have received notice, appeared and actively participated. Given all of the foregoing, the court determines that any defect has been cured by the actions of the parties and no amendment to the writ, summons and complaint is required.

For all of the foregoing reasons, the court respectfully denies the defendants' motion to dismiss.

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Judge: JOHN LOUIS CORDANI

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